

HOUSE BILL 2952
By Stanley

AN ACT to amend Tennessee Code Annotated, Title 25,
Chapter 1, relative to malicious prosecution.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 25, Chapter 1, Part 1, is amended by
adding the following as a new section thereto:

§ 25-1-109.

(a) Except in the case of a voluntary nonsuit with a good faith intention to refile the nonsuited case, a defendant shall have a right to recover for a personal injury, economic losses or injury to property proximately caused by a malicious prosecution, plus, in every civil action to recover damages for malicious prosecution, where the jury or, in a non-jury case, the judge or chancellor awards the plaintiff compensatory damages, the jury or judge or chancellor shall decide whether punitive damages should be awarded and shall not be required to find malice in addition to or other than the malice required to find liability for compensatory damages.

(b) In the event a case is dismissed by voluntary nonsuit, the statute of limitation applicable to a malicious prosecution claim by the defendant in the nonsuited case shall toll for a period of time co-extensive with the period of time within which the nonsuited claims may be refiled.

(c) Cases dismissed by voluntary nonsuit that are not refiled shall be presumed to have been maliciously filed; provided, this presumption shall be rebuttable by proof that the claim was plausible and that exigent circumstances required it to be filed and nonsuited to create the opportunity to do or to complete an investigation within the period allowed by the controlling statute of limitation to refile the nonsuited claims.

(d) When a jury or, in a non-jury case, a judge or chancellor returns a verdict that a malicious prosecution claim has been initiated or continued without probable cause, the defendant shall be awarded a verdict in an amount equal to twice the amount the defendant reasonably spent or incurred debt to pay for professional services of attorneys and for costs made necessary to secure a verdict adjudging the malicious prosecution claim to have been initiated or continued without probable cause against the defendant.

(e) Compensatory damages awarded against a defendant for malicious prosecution of a civil action from malicious prosecution shall be trebled; provided, no jury shall ever be informed, before the jury's verdict, that the compensatory damage award shall be trebled; provided, further, trebling the compensatory damage award is mandatory and a decision over which no adjudicator has any discretion; provided, further, no adjudicator shall be influenced to rule one way or another on any question as a means, indirectly, to overturn or modify in any way the trebling of a compensatory damage award; provided, further, the trebling of the compensatory damage award shall not prevent, substitute for, or mitigate in any way whether punitive damages should be awarded or the amount thereof.

(f) Malicious prosecution claims may be initiated and prosecuted as counterclaims in defense of claims filed against the counter-claiming defendant; provided, such counterclaims are not mandatory counterclaims.

(g) The common law of Tennessee holding that malicious prosecution claims are disfavored by the law, hereby, is repealed, and no court ever shall exercise its discretion or other inherent powers so as to make prosecution of malicious prosecution claims more onerous than any claims of any other kind or nature.

SECTION 2. This act shall take effect July 1, 2006, the public welfare requiring it.